

# THE SMALL BUSINESS ADVOCATE

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## In This Issue

Regulatory Flexibility Act  
Turns 20 .....1

## Message from the Chief Counsel

Small Business Contributes to the  
U.S. Economy .....3

## Regulatory Agencies

EPA Promulgates Water  
Pollution Rule .....4

## Economic News

Two Conferences Generate  
Discussion, Action .....5

Economic Expansion Benefits  
Small Business .....6

New BITS of Data .....6

## Technology Talk

Advocacy Fosters Small  
High-Tech Companies ....7

## News Brief

Nominations Needed for Small  
Business Advocate  
of the Year .....8

## RFA Celebrates 20 Years of Making a Difference to Small Business

The Regulatory Flexibility Act (RFA) turned 20 years old on September 19, 2000. Because of the persistent efforts of the Congress, the Office of Advocacy, and small businesses, the RFA has changed the culture of regulatory agencies by requiring the federal government to understand and appreciate more fully the role of small business in the economy.

Before the RFA was enacted in 1980, government agencies generally did not recognize or understand that small businesses could suffer disproportionately from their regulations. The direct costs involved in complying with a regulation are approximately the same for a large

company as for a small one. But a large company is able to spread the compliance costs over larger output and maintain a competitive advantage over a small company.

Recognizing this disparity, Congress passed the RFA, which requires agencies to review their regulatory proposals to determine if the rules are likely to have a "significant economic impact on a substantial number of small entities." If so, the RFA requires the agency to undertake a regulatory flexibility analysis in order to identify alternatives that could accomplish the same policy objectives with minimal effect on small entities.

*Continued on page 2*

## Advocacy Conferences Draw Congressional Leaders and Economic Experts



Chairman Jim Leach of the House Banking Committee listens to SBA Chief Counsel for Advocacy Jere W. Glover during an Advocacy conference on "The Changing Banking Structure and Its Impact on Small Business." For details, turn to page 5 of this issue.

## RFA Anniversary, from page 1

In monitoring agencies' compliance with the RFA over the years, the Office of Advocacy found that agencies often failed to conduct regulatory flexibility analyses. Some ignored the law altogether, while others asserted that the RFA did not apply to them. Other agencies recognized its applicability, yet failed to comply with the law.

Equally troubling was the finding that agencies often did not understand or accept the possibility that less burdensome regulatory alternatives may be equally effective in meeting objectives. Thus, many agencies failed—or even refused—to consider valid alternatives for their proposals even when small businesses brought such options to their attention.

At the 1995 White House Conference on Small Business, many participating small businesses pointed out the shortcomings in the RFA and called for amendments that would add “teeth” to the law. In response, in 1996, Congress enacted the Small Business Regulatory Enforcement Fairness Act (SBREFA), which amended the RFA to ensure more meaningful small business input in the regulatory development process.

The SBREFA amendments also added two new provisions to the RFA that have proven to be effective in changing the agencies' attitudes toward small businesses.

First, SBREFA mandates that a structured “review panel” be convened to ensure small business participation in the development of rules by the Environmental Protection Agency (EPA) and the Occupational Safety and Health Administration (OSHA) when such rules are anticipated to have a significant impact on small businesses.

Second, SBREFA authorizes the courts to review agency compliance with RFA in appeals from agency final actions.

Four years since the enactment of the SBREFA amendments, signs that the regulatory environment for small business has changed for the better are now visible. Federal agencies have begun to respond positively to the law. While some agencies are not totally in compliance with the law, many now see the value of the RFA process and the better informed regulatory decisions it produces.

Numerous agencies have implemented RFA compliance programs, including noticeably enhanced outreach efforts to small businesses. Other agencies have learned to comply with the RFA the hard way through litigation and are carefully monitoring the latest RFA case law to ensure future compliance. Most significantly, agencies and the Congress are paying special attention to the changes brought by the addition of the Small Business Advocacy Review panel process, which has ensured small businesses a formal seat at the regulatory table, where their input can make a real difference. Examples of the many SBREFA successes can be found in the *Annual Report of the Chief Counsel for Advocacy on Implementation of the Regulatory Flexibility Act*, available on the Office of Advocacy Web site at <http://www.sba.gov/advo>.

Because of the 1996 SBREFA amendments and diligent oversight and active involvement by Congress, the courts, small businesses, and the Office of Advocacy, federal agencies today are finally beginning to do what they should have been doing since the RFA first became law in 1980: considering small business concerns when developing regulations.

## The Small Business Advocate

**Editor** John B. Johnson IV

**Contributing Editors** Kathryn Tobias, Kenneth Simonson, Phaedra Brotherton, Sherri Alms

**Production Assistant** Darlene Moyer-Mahmoud

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## Message from the Chief Counsel

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### Small Business Accomplishments Benefit the U.S. Economy as a Whole

by Jere W. Glover

The small business community has made its concerns known in countless ways during recent years—through roundtables, forums, individual contacts and most formally through the National White House Conference on Small Business in 1995.

The Office of Advocacy has added to these small business perspectives a broad understanding of the small business community, based on analysis of new data and outside research. Studies show that a vibrant small business sector is the foundation for our strong economy, and we have been working hard to support a strong climate for the startup and growth of small business and entrepreneurship.

In our studies and discussions with small business leaders, we have addressed a variety of factors affecting small firms, including state small business policy, rural business development, labor shortages, and technology trends. In addition to developing data bases that shed new light on small business and informing policy makers of the changing small business environment, the Office of Advocacy has devoted significant efforts to increasing access to capital and improving the regulatory environment to ensure more opportunity for small business.

As entrepreneurs encounter opportunities, they often cannot find capital to fund their growth. In fact, the Office of Advocacy found that traditional bank lenders and venture capital sources hesitated to support small business. In 1994, the Office of Advocacy launched the annual report, *Small Business Lending in the United States*. Using government-collected data, the

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report disclosed the small business lending patterns of banks in each state.

As a result, banks began to court small business customers and increase their portfolios of small business loans. Since the first edition, the reports have been expanded to include the lending behavior of bank holding companies, as well as farm and rural lending patterns.

Advocacy developed a series of reports and held two conferences on bank consolidation and industrial organization (see page 5).

In addition to traditional lending, Advocacy has worked to encourage venture capital deals by launching the Access to Capital Electronic Network (ACE-Net), which links investors with small businesses seeking equity capital. The office pursued state regulatory changes to break down obstacles to such deals. States' "blue sky" laws had prevented small investments across state lines, but Advocacy's efforts resulted in exemptions for accredited investors in most states. Efforts to make more capital available to small business through other public policy initiatives have benefited the economy by encouraging job and economic growth.

The Office of Advocacy has made regulatory reform a hallmark of its work. It has been 20 years since the Regulatory Flexibility Act was enacted, requiring federal agencies to take a hard look at their proposed regulations to ensure that small entities were not carrying a disproportionate compliance burden (see the cover story on page 1).

However, real change in the culture of regulatory agencies has come only in recent years. Research published by the Office of Advocacy in 1994 illustrated that the disproportionate cost of regulations on small business was real, but dismissed too often by federal agencies. The Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) enhanced the Office of Advocacy's efforts to see that federal agencies comply with the Regulatory Flexibility Act.

Advocacy reviews approximately 1,500 regulatory proposals per year—proposals dealing with taxes, the environment, workplace safety, procurement, fisheries, health care, food safety, and banking, among others. From these, the office identifies the proposals that do not reflect the agency's compliance with the RFA and where the impacts could be significant, warranting Advocacy's intervention in the process to protect small business. I have exercised my right as chief counsel to file an *amicus curiae* brief in support of small businesses that challenged a federal rule in court. In a seminal case, *Northwest Mining Assn. v. Babbitt*, the court remanded the rule to the agency to address the issues raised by the Office of Advocacy. That decision has helped change the fed-

*Continued on page 7*

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## Regulatory News

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### Flexible EPA Regulation Will Save Truck Cleaning Industry Millions

After substantial input from the Office of Advocacy and the transportation equipment industry, the Environmental Protection Agency (EPA) has promulgated a water pollution rule that will save hundreds of facilities millions of dollars in annual costs. The final rule offers facilities that generate wastewater in cleaning trucks and containers two options in meeting pollution standards: numerical limits or pollution prevention.

The National Tank Truck Carriers (NTTC), an industry trade group, expects that most of its members will employ the pollution prevention methods at substantial savings over the traditional approach. The input of the Office of Advocacy and of the industry in crafting the final rule represents another success for the 1996 Small Business Regulatory Enforcement Fairness Act (SBREFA).

Industry specialists estimated that the initial capital costs of the original proposed rule would exceed \$80 million and that the rule would trigger approximately \$13 million in additional annual operating costs for the tank truck cleaning industry.

In 1997, the Environmental Protection Agency (EPA), the Office of Management and Budget (OMB), and the Office of Advocacy convened a panel to review the proposed rule to regulate the wastewaters generated by facilities that clean tank trucks and containers transporting products. The rule most affected the tank truck cleaning industry.

The Office of Advocacy worked with industry representatives to recommend ways to reduce the costs of this rule without damaging the environment. These original recom-

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Advocacy pointed out that the EPA overestimated the amount of pollution caused by the facilities, because the estimates were based on pollutants caused by pesticides that had long been banned in the United States. Therefore, in the panel report, Advocacy asked the agency to re-evaluate how much the additional regulation would reduce water pollution.

In July 1998, the EPA published a proposed rulemaking requiring facilities to use expensive technology to treat the interior wastewater generated in the cleaning of tank trucks transporting petroleum products, food grade products, and chemicals. The proposed regulation affected primarily "indirect dischargers," those facilities generating wastewater sent out to be treated by publicly owned treatment works (POTWs) before being released into U.S. waters. Accepting the panel report's earlier

recommendation, the proposed regulation did exempt all drums.

Both Advocacy and the NTTC believed that because the proposed rule was based on incorrect pollution estimates, the regulation for the tank truck subcategory was overly stringent.

Based on substantial industry and Advocacy input, before finalizing the rule in July, the EPA revised its benefit estimates, dropping those based on removing pesticides that had already been banned. After the revisions, the EPA found the regulation of the truck-chemical subcategory to be one of the least cost-effective effluent guidelines in recent history. Based on advice from the Office of Advocacy and the NTTC, the agency decided to offer two options: numerical pollution limits or a possibly less costly pollution prevention approach.

The Office of Advocacy, with industry input, helped develop a methodology for analyses by EPA that is widely recognized as a model for evaluating future effluent guidelines.

#### For More Information

For additional information, contact Kevin Bromberg, assistant chief counsel for environmental policy in Advocacy's Office of Interagency Affairs, at (202) 205-6533 or by e-mail at [kevin.bromberg@sba.gov](mailto:kevin.bromberg@sba.gov).



## Economic News

### Policy and Research Ideas Flow from Advocacy's Conferences on Antitrust, Banking Developments

The small business implications of antitrust policies and trends in the banking industry were the topics explored in two day-long conferences sponsored by the Office of Advocacy.

On January 21, the Advocacy conference, "The Invisible Part of the Iceberg: Research Issues in Industrial Organization and Small Business," drew a standing-room-only crowd to the House Small Business Committee's hearing room. Chief Counsel for Advocacy Jere W. Glover kicked off the meeting, which featured leading academics, senior policy makers, and interest group representatives, all of whom contributed valuable ideas on antitrust policy and research concerns affecting small business.

Glover and other speakers pointed out that although antitrust has generally been associated with the biggest firms, there needs to be more focus on the role of small firms as innovators, competitors, and customers.

Keynote speaker F.M. Scherer, a renowned professor at Harvard

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University's John F. Kennedy School of Government, discussed the role that small firms can play in keeping a large firm from dominating an industry and impeding technological progress. But, he argued, recent changes in patent and copyright law have made it much harder for new small entrants to succeed in some fields. He suggested examining ways to revise these laws to re-level the playing field.

Economics professors from New York University, George Washington University, and Indiana University documented the small-firm share in the economy and suggest-

ed ways to study the effect that changes in financial and other markets have on small firms' ability to enter and survive in these markets.

Luncheon speaker Adam Golodner, chief of staff in the Antitrust Division of the Justice Department, laid out the administration's record on fighting anti-competitive practices. Albert Foer, president of the American Antitrust Institute, presented a case for small business support of vigorous antitrust enforcement. A concluding panel of small business representatives and academics offered a mix of suggestions for policy and research.

On June 15, Advocacy held the conference, "The Changing Banking Structure and Its Impact On Small Business," in conjunction with the Milken Institute and the National Commission on Entrepreneurship. The environment for small business lending is rapidly changing as a result of technological developments such as credit scoring; market changes, such as ever-larger bank mergers; and the new Gramm-Leach-Bliley Act, which overhauls financial services regulation.

House Banking Committee Chairman Jim Leach (R-Iowa), the keynote speaker, and Ranking Member John LaFalce (D-New York), who opened the forum, underscored the need to ensure adequate loan funds to small business and of having Advocacy examine the subject. Advocacy Chief Counsel Jere Glover, two Advocacy senior economists, leading researchers from the Federal Reserve Board and other bank regulatory agencies, and several academic and banking representatives



Ranking Member John LaFalce of the House Banking Committee (right) makes his remarks during the banking conference attended by academia, bank regulators, and industry representatives. Also pictured are Jere W. Glover, chief counsel for advocacy (center), Allen Berger (far right), and Patrick Von Burgen (left).

*Continued on page 6*

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## Economic News

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### Small Business Shares in Economic Expansion

Unquestionably, 1999 was a good year for the economy as a whole. Recent data show that it was a good year for small business in particular.

The number of businesses of all types rose to a record 25 million, up 2.9 percent from 1998, according to preliminary Internal Revenue Service (IRS) estimates. The IRS estimates that 17.4 million individual tax returns included at least one Schedule C, the form used to report activity from a nonfarm sole proprietorship.

About 5.6 million corporate tax returns were filed, along with 2.0 million partnership returns. All three types of business tax returns were the highest numbers ever. For the first time, S corporations, the corporate form used almost exclu-

sively by small businesses, exceeded C corporations in number.

The Office of Advocacy estimates that 589,000 new businesses with employees were started in 1999, comparable to recent years.

Meanwhile, the number of business bankruptcies declined for the second straight year. The 1999 total of 37,639 was the lowest in more than 25 years. As a share of all firms, the 56.9 bankruptcies per 10,000 businesses was the lowest level ever. A report from the Administrative Office of the U.S. Courts shows a continuing decline in the first half of 2000.

In short, the number of businesses in operation continued to swell in 1999, and indications so far in 2000 are for more of the same.

**Conferences**, from page 5

discussed the availability of funds to small business in general and to women, minority, and rural small businesses in particular. They also put forth a number of proposals for further research.

### For More Information

The complete papers, a summary of the proceedings, and a brief executive summary from the industrial organization conference are available both in print and on Advocacy's Web site, <http://www.sba.gov/advo.www.sba.gov/advo>. A summary and selected speakers' materials from the banking conference are at [http://www.sba.gov/advo/b\\_cf00ap.pdf](http://www.sba.gov/advo/b_cf00ap.pdf).

To be notified about future Advocacy conferences, please send a fax to (202) 205-6928 or an e-mail to [advocacy@sba.gov](mailto:advocacy@sba.gov).

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### New "BITS" of Data Shed Light on High-Tech Employment

Two recent studies use an important new research tool funded by the Office of Advocacy to measure location decisions and growth rates for technology-intensive firms compared with others.

Both reports use the Census Bureau's Business Information Tracking Series (BITS), a file that contains information about the industry, location and employment of every nonfarm business with employees. Advocacy funded the creation and annual updating of the file, which now covers 1989-1997. The office funds outside researchers and also does analyses in-house.

Richard J. Boden of the University of Toledo used BITS to examine "Establishment Employment Change and Survival, 1992-1996." This study distinguished information technology (IT) indus-

tries from other goods- and service-producing industries. Boden found that IT industries added jobs at twice the rate of the private sector as a whole. Small firms with fewer than 500 employees accounted for more than two-thirds of the job growth in the period. The study also provided new information about average survival rates of new firms, based on their location and initial size.

Jed Kolko, a graduate economics student at Harvard University, used BITS for a part of his Ph.D. dissertation called "The High-Tech Rural Renaissance? Information Technology, Firm Size and Rural Employment Growth." This study tested the notion that communications and computer breakthroughs would encourage IT-intensive industries to locate in rural areas, where land costs and "hassles"

were presumably lower. Kolko found that in 1989-1995, rural areas indeed added jobs much faster than urban areas, with small firms growing the fastest in both locations. But IT-intensive industries were less likely than other firms to be in rural settings in 1989 and this "rural technology gap" grew sharply over the next six years.

Both studies and Advocacy's research summaries of them are available on Advocacy's Web site at <http://www.sba.gov/advo/research>.

### Advocacy Fosters Small High-Tech Companies

by Terry Bibbens

The Office of Advocacy has a long history of supporting small high-technology companies, starting with the proposal for the Small Business Innovation Research (SBIR) program in 1982. Milt Stewart, the first advocacy chief counsel, first proposed the SBIR as a national program. SBIR continues to be supported by Jere W. Glover, current chief counsel for the Office of Advocacy.

Under his direction, Advocacy's first technology efforts were to ensure that the technology sector was adequately represented in the 1995 White House Conference for Small Business. As a result of reaching out to high-tech industry associations, the representation at the White House Conference was larger than at any of the previous conferences and included many recommendations from the high-tech community.

The recently published final report from the White House Conference documents accomplishments since the conference.

In addition to the 1995 White House Conference, the office influenced the development of the Web site, <http://www.business.gov>, by

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providing leadership with an industry perspective. This Web site provides information of interest to business people without requiring them to know which government site contains which information. The site was one of the first user-friendly federal government Web sites. The office has also published a number of economic reports on the importance of the technology sector to the economy, and these can be viewed on the Advocacy Web site, <http://www.sba.gov/advo/stats>.

Other Advocacy efforts included support for improved patent protection for small businesses, so that large and foreign businesses have

less opportunity to interfere in the process. Work with high-tech associations also led to improved industry classifications of the technology markets in developing the North American Industry Classification System (NAICS), which will replace the old SIC codes.

A major effort of the office was developing the Access to Capital Electronic Network (ACE-Net) to streamline the securities laws for access to equity capital by small high-tech companies. This has provided the first-ever Internet securities listings for small companies, and has harmonized the securities laws in 40 states—with the remainder in process. Further developments involving the Internet is reflected in PRO-Net and TECH-Net with related links on the SBA Web site.

Last, the office has taken a lead to ensure that the Internet Corporation for Assigned Names and Numbers (ICANN) includes small companies in the process of developing the rules and organizations to manage Web domain names.

*Terry Bibbens is the Office of Advocacy's entrepreneur in residence.*

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#### Chief Counsel, from page 3

eral regulatory environment. As a result, more agencies are addressing small business concerns during the regulatory development stage. This results in changes to proposed regulations and billions of dollars of small business savings in regulatory costs.

Bringing capital to small firms and making government regulations work for (and not against) small businesses is critical to the U.S. economy in the 21st century. As a result of these small business successes, future generations of small businesses will benefit.

**QUESTIONS?**



**ANSWERS:**

**1-800-827-5722**

**The Small Business Answer Book**

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## News Briefs

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### Small Business Week Award Nominations Sought

Small Business Week was set aside by the president in the early 1960s to recognize the achievements of America's vibrant small business community. Early on, the president recognized the important work of those who speak out on behalf of small business by presenting national awards for outstanding advocacy efforts in a number of areas.

The 38th National Small Business Week celebration will be held in spring 2001, and as the number of small businesses reaches new record levels, it promises to be one of the most memorable ever. Awards will be presented to exemplary small business owners in each state and the District of Columbia and to National Small Business Advocates and Special Award Winners in the following categories: Accountant Advocate,

Entrepreneurial Success Award, Financial Services Advocate, Home-Based Business Advocate, Minority Small Business Advocate, Small Business Exporter, SBA Young Entrepreneur, Small Business Journalist of the Year, Veteran Advocate, and Women in Business Advocate. Readers of *The Small Business Advocate* have an opportunity to get in on the ground floor of this celebration by nominating outstanding advocacy award candidates. Nominations are due to SBA district offices no later than November 13, 2000. For more information, contact the SBA district office nearest you or visit the SBA Web site at <http://www.sba.gov/library/pubs/2001nominationguidelines.html> for nomination guidelines and a list of district offices.



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